

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**MWK RECRUITING, INC.
Plaintiff,**

v.

**EVAN P. JOWERS, YULIYA
VINOKUROVA, ALEJANDRO VARGAS,
and LEGIS VENTURES (HK) COMPANY
LIMITED (aka Jowers / Vargas),
Defendants.**

Civil Action No. 1:18-cv-00444

EVAN P. JOWERS

Counterclaimant,

v.

**MWK RECRUITING, INC., ROBERT E.
KINNEY, MICHELLE W. KINNEY,
RECRUITING PARTNERS GP, INC.,
KINNEY RECRUITING LLC, COUNSEL
UNLIMITED LLC, and KINNEY
RECRUITING LIMITED**

Counter-defendants.

**EVAN P. JOWERS'S RENEWED MOTION TO DISQUALIFY ROBERT E. KINNEY AS
COUNSEL FOR PLAINTIFF AND COUNTER-DEFENDANTS**

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A. Robert Kinney is a Necessary Witness.

It is uncontested that Robert Kinney is a necessary witness because he admits he is the *only* 30(b)(6) witness for every Kinney Entity named in this lawsuit¹ and the only person who had any role in drafting the contracts that form the basis of his claims against Evan Jowers. Robert Kinney also created and signed every assignment agreement at issue in this case, according to his sworn declaration. (Dkt. 209-1 at ¶ 5)(“I signed each of the assignment documents involved in this case. Dkt. 80-3; Dkt. 80-5; Dkt. 80-7; Dkt. 80-8.”). Further, Robert Kinney signed each and every declaration and verification in this case on behalf of the Kinney Entities. (See, e.g., Dkt. 209-1 at ¶ 6)(“the MWK Entities have fully responded to all responsive documents and information in their possession after a diligent search.”).

Lest there be any doubt, in his Third Revised Initial Disclosures, served just three days before the present motion was filed, Mr. Kinney lists himself as the only witness with “[k]nowledge of facts supporting claims and defenses,” as well as the “causes of action of the Kinney Entities” and the alleged “damages suffered by the Kinney Entities.” (Tauler Dec. ¶ 2, Ex. A; “Third Revised Initial Disclosures.”).

Accordingly, there remains not a sliver of doubt that Robert Kinney “is a necessary witness with exclusive knowledge of matters likely to be the subjects of testimony.” (Dkt. 110 at 7.) As such, Robert Kinney should be disqualified as counsel.

B. Kinney’s Response Misstates the Court’s Previous Order.

When the Court first considered whether Mr. Kinney should be able to represent the Kinney Entities in October 2019, the pleadings were not yet set, and discovery had not yet commenced. Jowers brought his first motion for disqualification at a relatively early point in the

¹ The Kinney Entities include MWK Recruiting, Inc., Recruiting Partners GP, Inc., Kinney Recruiting LLC, Counsel Unlimited LLC, and Kinney Recruiting Limited

case given his beliefs about Mr. Kinney's anticipated conduct. However, at that time, the Court was not in a position to make a factual determination given the lack of a definitive record at such an early stage of the proceedings.

Over a year after the Court's Order on Jowers' initial motion, the Court is presented with a record containing Mr. Kinney's own statements under oath (as witness and attorney) that he has exclusive knowledge about every single area of testimony that may be raised as to any and all of the corporate parties and the various contracts bandied about in their name. At this time in the case, the record before the Court is comprehensive and complete in that there is no contradictory conclusion: Mr. Kinney is the only witness as to nearly every factual issue in dispute.

Mr. Kinney's Response brief misstates the Court's prior ruling on Jowers' motion for disqualification, as well as the law, by asserting that the proper standard is whether the Court can "declare with absolute certainty...that Kinney possesses exclusive knowledge of various matters at issue." (Dkt. 255 at 2.) The standard adopted by the Court, and restated in the moving papers, is whether "the lawyer knows or believes that the lawyer is or may be a witness necessary to establish an essential fact." (Dkt. 254 at 7 of 91.) As such, the Court previously stated that the standard could be met here, when "Jowers can establish with a higher degree of certainty that Kinney is a necessary witness with exclusive knowledge of matters likely to be the subjects of testimony..." (Dkt. 110 at 7.)

Even if absolute certainty were the standard, it would be met here. Mr. Kinney has already stated on multiple occasions, and in multiple ways, that he is a necessary witness, however, in his Response, Mr. Kinney downplays the import of his prior positions. Perhaps

most tenuous is Mr. Kinney's position that his status as the only 30(b)(6) witness for every corporate party in the case does not make him a necessary witness.

Mr. Kinney's only citation to legal authority to support this position is *Natural Resources Defense Council, Inc. v. County of Dickson, Tenn.* 2010 WL 5300871 (M.D. Tenn., Dec. 20, 2010). In *Natural Resources*, the defendant served a 30(b)(6) notice to plaintiff, and plaintiff filed a motion for protective order on the basis that it "had no involvement in, nor any personal knowledge of, many of the listed deposition topics, several of which related solely to defendants' actions." *Id.* at *2. The Court allowed the deposition to proceed, and plaintiff designated a staff attorney as the 30(b)(6) witness who "repeatedly asserted that [counsel] has no personal knowledge of any of the facts, transactions or occurrences giving rise to the claims in this case." *Id.* at *3. As such, disqualification was not warranted in *Natural Resources*.

In contrast, here, Mr. Kinney has already conceded that he will be the only witness as to all contracts, assignments, and deposition topics related to any Kinney Entity. Mr. Kinney is also the only witness with "[k]nowledge of facts supporting claims and defenses," and damages. (Tauler Dec.. Ex. A). As such, even if it were controlling authority, *Natural Resources* would not support Mr. Kinney's conclusion.

C. Kinney's Response Mischaracterizes the Basis of the Moving Papers.

The Response asserts that "Jowers makes only two points about the necessity of Kinney's testimony." (Dkt. 255 at 2 of 9.) This is not so. Jowers includes three emails where Mr. Kinney states he is a necessary witness for 42 areas of testimony, including the administration of various loans made by the Kinney Entities to Mr. Jowers over the years. In this regard, third party witnesses have confirmed that Robert Kinney, (and Robert Kinney

alone) directed loan disbursements. (Tauler Dec. ¶ 3, Ex. B, Deposition Transcript of Renee Sommers at 35:2-18; 117:2-13.)

The remainder of the Response consists of various red herrings, straw-men and double-talk that only serves to confuse the reader, including:

- That Kinney’s drafting of every contract and assignment in the case is not relevant to the case (even though he used this fact as evidence to support a motion for protective order) because contract interpretation is both “a matter of law” and also *arguendo*, “an issue at trial.” (Dkt. 255 at 3-4 of 9.)
- Contending that his assertions of privilege regarding his communications with the Kinney Entities’ Accountant Renee Sommers were proper because of the “danger of waiver of privilege” while at the same time representing every corporate party to this case and being the only factual witness for these parties. (Dkt. 255 at 7 of 9.)
- Assuming that Jowers is relying on the “public suspicion” rationale of *Boettcher* to support disqualification then conducting a legal analysis based on this assumption. (Dkt. 255 at 6 of 9.)
- Dedicating a page of the Response brief to defend his deposition questioning of one witness (whom Kinney himself subpoenaed) which Kinney concurrently argues is “largely irrelevant.” (Dkt. 255 at 6 of 9.)
- Pre-emptively discrediting witnesses who have come forward against Mr. Kinney and his stated objectives. (Tauler Dec. ¶ 4, Ex. C, Deposition Transcript of Peter Gutensohn at 45:4-46:24; 48:4-11.)

The above arguments made in the Response are (at best) diversionary and do not warrant a serious reply. Rather, the Response serves to illustrate yet another point raised in the moving papers, namely, that Mr. Kinney is too intimately connected with the subject matter to serve as a dispassionate counsel, and that Mr. Jowers will be prejudiced as a result.

CONCLUSION

For the foregoing reasons, the motion should be granted, and Mr. Kinney should be disqualified as counsel.

DATED: January 21, 2021

Respectfully submitted,

By: /s/ Robert Tauler
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Austin, TX 78701
Telephone: (512) 456-8760

**COUNSEL FOR DEFENDANT
AND COUNTERCLAIMANT
EVAN P. JOWERS**

DECLARATION OF ROBERT TAULER

I, Robert Tauler, hereby declare as follows:

1. I am counsel of record for Evan P. Jowers in this action. I have personal knowledge of the facts stated in this declaration, and if called as a witness, could and would testify competently to the truth of the facts as stated herein.

2. Attached hereto as Exhibit A is a true and correct copy of the Kinney Entities' Third Revised Initial Disclosures, dated January 12, 2021.

3. Attached hereto as Exhibit B is a true and correct copy of excerpts from the transcript of the deposition of Renee Sommers, conducted on November 9, 2020.

4. Attached hereto as Exhibit C is a true and correct copy of excerpts from the transcript of the deposition of Peter Gutensohn, conducted on December 9, 2020.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed at Los Angeles, California on January 21, 2021.

/s/ Robert Tauler

Robert Tauler

CERTIFICATE OF SERVICE

I hereby certify that, on January 21, 2021, a true and accurate copy of the foregoing document was served on all counsel of record via the Court's CM/ECF system.

/s/ Robert Tauler
Robert Tauler

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MWK RECRUITING, INC,

Plaintiff

v.

**EVAN P. JOWERS, YULIYA
VINOKUROVA, LEGIS
VENTURES (HK) COMPANY
LIMITED, AND
ALEJANDRO VARGAS,**

Defendants

Case No. 1:18-cv-00444-RP

EVAN P. JOWERS,

Counterclaimant

v.

**MWK RECRUITING, INC.,

ROBERT E. KINNEY,
MICHELLE W. KINNEY,
RECRUITING PARTNERS GP, INC.,
KINNEY RECRUITING LLC,
COUNSEL UNLIMITED LLC, and
KINNEY RECRUITING LIMITED,**

Counterdefendants

KINNEY ENTITIES' THIRD REVISED INITIAL DISCLOSURES

Plaintiff MWK Recruiting Inc. (“**MWK**”), now known as Counsel Holdings, Inc., and Counter-defendants Robert E. Kinney (“**Kinney**”), Michelle W. Kinney (“**M.W. Kinney**”), Recruiting Partners GP, Inc., Kinney Recruiting LLC, Counsel Unlimited LLC, and Kinney Recruiting Limited (the “**Counter-defendants**” and, collectively with MWK, the “**Kinney Entities**”) provide these Third Revised Initial Disclosures to Defendant Evan P. Jowers (“**Jowers**”) pursuant to Federal Rule of Civil Procedure 26(a). The Kinney Entities base these disclosures on information that is reasonably available to them at this time and their understanding of the allegations set forth in the pleadings Defendants have filed. The Kinney Entities reserve the right to amend or supplement these disclosures, to the extent necessary, as the case progresses and as Defendant/Counter-plaintiff makes his specific allegations and information known.

1. Persons with Relevant Knowledge and Subject of Information.

The Kinney Entities identify the following individuals likely to have discoverable information the Kinney Entities may use to support their claims and/or defenses.

Robert E. Kinney

Address:

c/o The Mort Law Firm, PLLC
100 Congress Ave, Ste 2000
Austin, Texas 78701

Subjects: Knowledge regarding the operation, policies, finances, business relationships, contracts, trade secrets, accounting, and causes of action of the Kinney Entities; knowledge regarding assignment of the contacts-in-suit; and knowledge regarding the damages

suffered by the Kinney Entities. Knowledge of facts supporting claims and defenses.

Matthew Gardiner

Address:

c/o The Mort Law Firm, PLLC
100 Congress Ave, Ste 2000
Austin, Texas 78701

Subjects: Database contents of Kinney Entities; operation of the Kinney Entities including existence of contracts with law firms and corporations. The storage and security of Kinney Entities' confidential and proprietary information including operational processes, rules, policies, and trade secrets.

Alexis Lamb

Address:

Legis Ventures (HK) Company Limited
Miami, Florida

Subjects: Financial relationship of Jowers and his colleagues, financial arrangements within the various Jowers entities, candidates for placement of the Jowers entities, and law firms and corporations where Jowers has placed candidates. Operation of the Jowers entities, including contracts between employees and the companies, splits of commissions, ownership interests, bank relationships, and credit split arrangements. The Jowers entities' operational processes, rules, policies, and trade secrets.

Peter Gutensohn

Address:

4720 Cypress Landing
Saint Cloud, FL 34772

Subjects: Information related to Jowers's activities before and after leaving the Kinney Entities, candidates with whom Jowers has worked, and fees earned by Jowers.

Renee Sommers

Address:

c/o The Mort Law Firm, PLLC
100 Congress Ave, Ste 2000
Austin, Texas 78701

Subjects: Financial accounting and bookkeeping for the Kinney Entities,
including payroll information.

John Jaworski

Address:

c/o The Mort Law Firm, PLLC
100 Congress Ave, Ste 2000
Austin, Texas 78701

Subjects: Database contents of Kinney Entities; operation of the Kinney
Entities including existence of contracts with law firms and
corporations. The storage and security of Kinney Entities'
confidential and proprietary information including operational
processes, rules, policies, and trade secrets.

Daniel Roark

Address:

c/o The Mort Law Firm, PLLC
100 Congress Ave, Ste 2000
Austin, Texas 78701

Subjects: The Kinney Entities' confidential and proprietary information
including operational processes, rules, policies, and trade
secrets.

Jack Hopper

Address:

c/o The Mort Law Firm, PLLC
100 Congress Ave, Ste 2000

Austin, Texas 78701

Subjects: The Kinney Entities' confidential and proprietary information including operational processes, rules, policies, and trade secrets.

Allen & Overy LLP

Address:
1221 Avenue of the Americas
New York, NY 10020

Subjects: Placements made by and candidates for placement presented by Jowers, Vargas, and their colleagues, timing of placements, placement fees, statements made by Jowers about the candidates and their backgrounds, including confidential and trade secret information.

Baker & McKenzie LLP (Ed Zulkey)

Address:
300 East Randolph Street, Suite 5000
Chicago, Illinois 60601

Subjects: Placements made by and candidates for placement presented by Jowers, Vargas, and their colleagues, timing of placements, placement fees, statements made by Jowers about the candidates and their backgrounds, including confidential and trade secret information.

Cleary Gottlieb Steen & Hamilton LLP

Address:
One Liberty Plaza
New York, NY 10006

Subjects: Placements made by and candidates for placement presented by Jowers, Vargas, and their colleagues, timing of placements, placement fees, statements made by Jowers about the

candidates and their backgrounds, including confidential and trade secret information.

Cooley LLP (Anne Mooney)

Address:

3175 Hanover Street
Palo Alto, CA 94304-1130

Subjects: Placements made by and candidates for placement presented by Jowers, Vargas, and their colleagues, timing of placements, placement fees, statements made by Jowers about the candidates and their backgrounds, including confidential and trade secret information.

Covington & Burling

Address:

One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956

Subjects: Placements made by and candidates for placement presented by Jowers, Vargas, and their colleagues, timing of placements, placement fees, statements made by Jowers about the candidates and their backgrounds, including confidential and trade secret information.

Debevoise & Plimpton LLP

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New York, NY 10022

Subjects: Placements made by and candidates for placement presented by Jowers, Vargas, and their colleagues, timing of placements, placement fees, statements made by Jowers about the candidates and their backgrounds, including confidential and trade secret information.

DLA Piper LLP

Address:

401 B Street

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San Diego, California 92101-4297

Subjects: Placements made by and candidates for placement presented by Jowers, Vargas, and their colleagues, timing of placements, placement fees, statements made by Jowers about the candidates and their backgrounds, including confidential and trade secret information.

Gibson, Dunn & Crutcher LLP (Stacy Glover)

Address:

333 South Grand Avenue

Los Angeles, CA 90071-3197

Subjects: Placements made by and candidates for placement presented by Jowers, Vargas, and their colleagues, timing of placements, placement fees, statements made by Jowers about the candidates and their backgrounds, including confidential and trade secret information.

Gunderson Dettmer

Address:

550 Allerton Street

Redwood City, CA 94063

Subjects: Placements made by and candidates for placement presented by Jowers, Vargas, and their colleagues, timing of placements, placement fees, statements made by Jowers about the candidates and their backgrounds, including confidential and trade secret information.

Kirkland & Ellis LLP (William Pruitt)

Address:

300 North LaSalle
Chicago, IL 60654

Subjects: Placements made by and candidates for placement presented by Jowers, Vargas, and their colleagues, timing of placements, placement fees, statements made by Jowers about the candidates and their backgrounds, including confidential and trade secret information.

Latham & Watkins (Mathew Roskoski)

Address:

355 South Grand Avenue, Suite 100
Los Angeles, CA 90071-1560

Subjects: Placements made by and candidates for placement presented by Jowers, Vargas, and their colleagues, timing of placements, placement fees, statements made by Jowers about the candidates and their backgrounds, including confidential and trade secret information.

Morrison & Foerster, LLP (Doug Hendricks)

Address:

425 Market Street
San Francisco, CA 94105-2482

Subjects: Placements made by and candidates for placement presented by Jowers, Vargas, and their colleagues, timing of placements, placement fees, statements made by Jowers about the candidates and their backgrounds, including confidential and trade secret information.

Paul, Weiss, Rifkind, Wharton & Garrison LLP

Address:

1285 Avenue of the Americas

New York, NY 10019-6064

Subjects: Placements made by and candidates for placement presented by Jowers, Vargas, and their colleagues, timing of placements, placement fees, statements made by Jowers about the candidates and their backgrounds, including confidential and trade secret information.

Ropes & Gray LLP

Address:
Prudential Tower
800 Boylston St.
Boston, MA 02199

Subjects: Placements made by and candidates for placement presented by Jowers, Vargas, and their colleagues, timing of placements, placement fees, statements made by Jowers about the candidates and their backgrounds, including confidential and trade secret information.

Skadden, Arps, Slate, Meagher & Flom, LLP

Address:
One Manhattan West
New York, NY 10001-8602

Subjects: Placements made by and candidates for placement presented by Jowers, Vargas, and their colleagues, timing of placements, placement fees, statements made by Jowers about the candidates and their backgrounds, including confidential and trade secret information.

Simpson, Thacher & Bartlett LLP

Address:
425 Lexington Avenue
New York, NY 10017

Subjects: Placements made by and candidates for placement presented by Jowers, Vargas, and their colleagues, timing of placements, placement fees, statements made by Jowers about the candidates and their backgrounds, including confidential and trade secret information.

Weil, Gotshal & Manges, LLP

Address:
767 Fifth Avenue
New York, NY 10153-0119

Subjects: Placements made by and candidates for placement presented by Jowers, Vargas, and their colleagues, timing of placements, placement fees, statements made by Jowers about the candidates and their backgrounds, including confidential and trade secret information.

Kevin Cooper

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55 Hudson Yards
New York, NY 10001-2157

Subjects: Relationship with Jowers and other affiliated recruiters, timing of submission for placement, timing and content of communication with Kinney Entities and Jowers. Confidential and proprietary information including trade secrets shared with the Kinney Entities and Jowers.

Steve (Wonsuk) Kang

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Nicole Ma

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Beijing – 100020; China

Subjects: Relationship with Jowers and other affiliated recruiters, timing of submission for placement, timing and content of communication with Kinney Entities and Jowers. Confidential and proprietary information including trade secrets shared with the Kinney Entities and Jowers.

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Mengqi Zhang

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Judy Huang

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Subjects: Relationship with Jowers and other affiliated recruiters, timing of submission for placement, timing and content of communication with Kinney Entities and Jowers. Confidential

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Jason Lim

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Min Liu

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Contact information not known at this time.

Subjects: Relationship with Jowers and other affiliated recruiters, timing of submission for placement, timing and content of communication with Kinney Entities and Jowers. Confidential and proprietary information including trade secrets shared with the Kinney Entities and Jowers.

Chuan Liu

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Contact information not known at this time.

Subjects: Relationship with Jowers and other affiliated recruiters, timing of submission for placement, timing and content of communication with Kinney Entities and Jowers. Confidential and proprietary information including trade secrets shared with the Kinney Entities and Jowers.

Ben Su

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Aster Lin

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Jenny Qi

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communication with Kinney Entities and Jowers. Confidential and proprietary information including trade secrets shared with the Kinney Entities and Jowers.

Cynthia Mo

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Vanessa Ho

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Subjects: Relationship with Jowers and other affiliated recruiters, timing of submission for placement, timing and content of communication with Kinney Entities and Jowers. Confidential and proprietary information including trade secrets shared with the Kinney Entities and Jowers.

Phong Quan

Address:

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Subjects: Relationship with Jowers and other affiliated recruiters, timing of submission for placement, timing and content of

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Ingram Weber

Address:

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Flora Bai

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Contact information not known at this time.

Subjects: Relationship with Jowers and other affiliated recruiters, timing of submission for placement, timing and content of communication with Kinney Entities and Jowers. Confidential and proprietary information including trade secrets shared with the Kinney Entities and Jowers.

Raymond Chau

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1 Connaught Road Central

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Subjects: Relationship with Jowers and other affiliated recruiters, timing of submission for placement, timing and content of communication with Kinney Entities and Jowers. Confidential and proprietary information including trade secrets shared with the Kinney Entities and Jowers.

Xunming Lim

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049321

Subjects: Relationship with Jowers and other affiliated recruiters, timing of submission for placement, timing and content of communication with Kinney Entities and Jowers. Confidential and proprietary information including trade secrets shared with the Kinney Entities and Jowers.

Congsi Wu

Address:

Contact information not known at this time.

Subjects: Relationship with Jowers and other affiliated recruiters, timing of submission for placement, timing and content of communication with Kinney Entities and Jowers. Confidential

and proprietary information including trade secrets shared with the Kinney Entities and Jowers.

Rose Zhu

Address:

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21st Floor, CCB Tower

3 Connaught Road Central

Hong Kong SAR

Subjects: Relationship with Jowers and other affiliated recruiters, timing of submission for placement, timing and content of communication with Kinney Entities and Jowers. Confidential and proprietary information including trade secrets shared with the Kinney Entities and Jowers.

Steve King

Address:

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Subjects: Relationship with Jowers and other affiliated recruiters, timing of submission for placement, timing and content of

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The Kinney Entities may also rely on individuals identified in the initial disclosures of any other party to support its claims and/or defenses. The Kinney Entities may also rely on any witnesses who provide deposition testimony in this matter to support their claims and/or defenses.

The Kinney Entities likely will rely on experts to support their claims or defenses. At this time, the Kinney Entities have not yet determined which expert(s), if any, may testify in this manner.

The Kinney Entities expect to discover additional witnesses whose specific identities are not yet known to support its claims and defenses. These witnesses will likely have knowledge relating to the placement and recruitment of candidates and exploitation of MWK's trade secrets.

2. Documents and Things.

The Kinney Entities identify the following categories of documents, electronically stored information, and tangible things that Defendant/Counterplaintiff has in his possession, custody, or control and that they may use to support their claims and/or defenses.

- a. Documents describing MWK's proprietary and confidential information and MWK's trade secrets.

- b. Documents describing the relationship between MWK and Jowers, including employment contracts, loan agreements, email and electronic messages,
- c. Documents describing the relationship between MWK and law firms and corporations for the placement of candidates, including contracts and email.
- d. Documents describing the relationship between MWK and candidates for placement, including email.
- e. Other information that may be discovered in the course of this litigation, including from Defendants and third parties.

3. Damages.

MWK seeks a recovery of damages for breaches of contracts and misappropriation of trade secrets in an amount that cannot be presently calculated in full. As of this date, MWK is aware of the following placements made by Jowers, each of which was made in violation of MWK's rights, on or approximately on the date indicated on **Exhibit A**. By virtue of the damage provisions of Jowers's contract of employment, these amounts are due as damages to MWK.

With regard to the Revolving Loan and the Forgivable Loan, the amounts owed are calculated in the accounting attached hereto as **Exhibit B**, which has been previously provided to Jowers on November 23, 2020.

MWK also seeks an award of its reasonable and necessary attorneys' fees and costs in an amount that cannot presently be calculated. The Kinney Entities also seek an award of actual, special, and punitive damages.

4. Indemnity and Insurance Agreements.

The Kinney Entities are unaware of any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

Dated: January 12, 2021

Respectfully Submitted

/s/ Robert E. Kinney

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**ATTORNEYS FOR PLAINTIFF
AND COUNTER-DEFENDANTS**

EXHIBIT B

Transcript of the Testimony of
Renee Sommers

Date:

November 09, 2020

Case:

MKW RECRUITING vs EVAN P. JOWERS

1 A. No.

2 Q. But you didn't -- you never asked Mr. Jowers how he
3 wanted this money allocated?

4 A. No, because he owed the money, and it's not his
5 choice when he has an outstanding loan.

6 Q. Whose choice is it?

7 A. It's the boss's, who he owes the loan to.

8 Q. Okay.

9 But have you reviewed the contract that determines
10 who makes that decision?

11 A. No.

12 Q. Isn't that something that you would want to do as a
13 CPA?

14 A. Maybe, but I didn't have access to it.

15 Q. Did you ask for it?

16 A. No.

17 Q. You just did whatever Mr. Kinney decided, right?

18 A. Yes.

19 Q. And in some cases he said, apply it to the loans and
20 in other cases he said, give Evan some money; is that fair?

21 A. Yes.

22 Q. Let's move on to Exhibit 202.

23 MR. KINNEY: Is this a good time to take a
24 break, Rob?

25 MR. TAULER: We could, yes.

1 A. No. I don't --

2 Q. You follow Robert Kinney's instructions, correct?

3 A. Yes.

4 Q. And you -- so then you decided to not pay Evan
5 Jowers for the commission that you are telling him on December
6 16th that he has earned; isn't that right?

7 MR. KINNEY: Object to the form.

8 A. It wasn't my decision.

9 Q. You did what Robert Kinney said, right?

10 A. Yes.

11 Q. Was there anyone else besides Robert Kinney giving
12 you direction at this time?

13 A. No.

14 Q. When was it determined that Evan Jowers would not be
15 credited this amount from Hui Zhu?

16 A. I don't know.

17 Q. You don't know? I mean -- but you're the
18 accountant, right?

19 A. Yes.

20 Q. So you knew at some point, didn't you?

21 A. Yes. It's been a long time.

22 Q. Was it like a month after this that you realized
23 this or was it a year?

24 A. I don't remember.

25 Q. But at some point after Evan quit, the determination

EXHIBIT C

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ORIGINAL

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE WESTERN DISTRICT OF TEXAS
 3 AUSTIN DIVISION
 4 CIVIL ACTION NO. 1:18-CV-00444

5 MWK RECRUITING, INC.,
 6 PLAINTIFF

7 V.

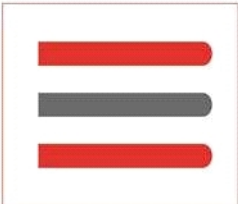
8 EVAN P. JOWERS, YULIYA
 9 VINOKUROVA, ALEJANDRO VARGAS,
 10 AND LEGIS VENTURES (HK) COMPANY
 11 LIMITED (AKA JOWERS / VARGAS),
 12 DEFENDANTS

13 _____/
 14 EVAN P. JOWERS,
 15 COUNTERCLAIMANT,

16 V.

17 MWK RECRUITING, INC., ROBERT E.
 18 KINNEY, MICHELLE W. KINNEY,
 19 RECRUITING PARTNERS GP, INC.,
 20 KINNEY RECRUITING LLC, COUNSEL
 21 UNLIMITED LLC, AND
 22 KINNEY RECRUITING LIMITED,
 23 COUNTER-DEFENDANTS

24 _____/
 25 VIDEOCONFERENCE DEPOSITION OF PETER GUTENSOHN
 DATE: DECEMBER 9, 2020
 REPORTER: KRISTEN LIVESY
 PLACE: ALL PARTIES APPEARED VIDEOCONFERENCE



1 the endeavor was to break at Evan. That he was not
2 going to be able to work. That Robert would continue to
3 tie them up in courts, essentially forever.

4 Q And can you expand upon that? What did he
5 mean? Did he explain what -- did Mr. Kinney explain
6 what he meant by break Mr. Jowers?

7 A That he put him in a position where he had no
8 money. That he had no business. That it would be
9 unable to continue in the business.

10 Q So Mr. Kinney told you that the only purpose
11 of his lawsuit against Mr. Jowers was strictly to cause
12 Mr. Jowers to pay attorney's fees?

13 MR. KINNEY: Objection to form. You can
14 answer.

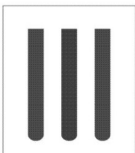
15 A Specifically that the costs of the litigation,
16 which I took to be attorney's fees, were going to break
17 Mr. Jowers.

18 Q And would Mr. Kinney ever share with you his
19 thoughts on how the case was progressing?

20 A Oh, yeah. At anytime you talked to Robert
21 about the case, he's winning everything.

22 Q And do you remember specific instances of Mr.
23 Kinney sharing with you how the case was going?

24 A I would get e-mails from Robert with the
25 outcome of various hearings.



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TAMPA, FL 33602

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1 Q And you were never Robert Kinney's client,
2 right? In an attorney-client relationship, right?

3 MR. KINNEY: Objection. Form.

4 Q You don't consider Mr. Kinney to be your
5 attorney, do you?

6 A No. I do not. Mr. Kinney was my employer.

7 Q Was Mr. Kinney ever your attorney?

8 A No.

9 Q As far as you know, was Mr. Kinney ever the
10 attorney of any other Kinney Recruiting employee as long
11 as you were there?

12 A To my knowledge, no.

13 Q Did Mr. Kinney ever tell you that with respect
14 to DLA Piper's involvement in the case that he was happy
15 Evan was spending money?

16 A He -- he told me specifically the DLA was
17 going to bleed Evan dry.

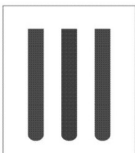
18 Q And was he happy about that?

19 A He was pretty entertained by it.

20 Q What did he tell you specifically? Do you
21 remember?

22 A That every time he filed anything, that it
23 would cost Evan thousands of dollars in attorney's fees
24 and he thought it was funny.

25 Q So he thought it was funny?



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1 Q Do you remember how many times roughly Mr.
2 Kinney expressed this to you?

3 MR. KINNEY: Objection. Form.

4 Q Let me rephrase the question. Do you remember
5 how many times between the beginning of 2017 and your
6 departure in 2019 that Mr. Kinney expressed a sentiment
7 that he wanted to get even with Evan Jowers through his
8 payment of attorney's fees -- through Mr. Jower's
9 payment of attorney's fees during this time frame?

10 A I can't give you an exact number, but it was
11 regularly. For me, I -- I would say dozens of times.

12 Q Did you ever put that on record?

13 A Actually, that -- that period extended to
14 after I had left Kinney Recruiting. I would get e-mails
15 from Robert keeping the up-to-date on the status of the
16 lawsuit, which I personally felt was a shaded warning
17 that this is what happens.

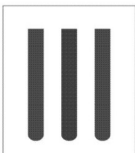
18 Q It was a warning from Mr. Kinney to other
19 employees, do you mean?

20 A To me. That if I -- that if I crossed Mr.
21 Kinney's line, that he'd do the same thing to me.

22 Q And so you ended up leaving Kinney Recruiting
23 May of 2019, correct?

24 A Correct.

25 Q And do you remember how many employees were



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